# APPENDIX A

In the
United States Court of Appeals
For the Fifth Circuit

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No. 29638

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Atlanta and West Point Railroad Company and
Western Railway of Alabama,—
Plaintiffs-Appellees,

versus

United Transportation Union, an Unincorporated
Labor Union, and C. M. Cagle, etc.,
Defendants-Appellants.

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Appeal from the United States District Court for the
Northern District of Georgia

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(February 19, 1971)

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Before Bell, Dyer and Roney,
Circuit Judges

DYER, Circuit Judge: The United Transportation Union appeals from the District Court's order preliminarily enjoining a strike during a labor dispute with the Atlanta and West Point Railroad and the Western Railway of Alabama.[1] Essentially the union contends that these railroads had no standing to seek, and the District Court had no power to issue, an injunction

[1] The District Court's Order is reported at 307 F. Supp. 1205.

because the carriers had not complied with the Norris-LaGuardia Act § 8, 29 U.S.C.A. § 108,[2] or the Railway Labor Act §§ 2, Third, and 6, 45 U.S.C.A. §§ 152, Third, 156.[3] We affirm.

The dispute *sub judice* evolves from the often hostile milieu and fiery history of union-management relationships in the railroad industry: the incipiency of

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[2] Section 8 of the Norris-LaGuardia Act provides:

> No restraining order or injunctive relief shall be granted to any complainant who has failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or who has failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration.

29 U.S.C.A. § 108.

[3] Section 2 of the Railway Labor Act provides in pertinent part:

> Third: Representatives, for the purposes of this chapter, shall be designated by the respective parties without interference, influence, or coercion by either party over the designation of representatives by the other; and neither party shall in any way interfere with, influence, or coerce the other in its choice of representatives. . . .
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> . . . . . .
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> Seventh. No carrier . . . shall change the rates of pay, rules, or working conditions of its employees, as a class, as embodied in agreements except in the manner prescribed in such agreements or in section 156 of this title [section 6 of the Act].

45 U.S.C.A. §§ 152, Third, Seventh. Section 6 of the Act provides:

> Carriers and representatives of the employees shall give at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions, and the time and place for the beginning of conference between the representatives of the parties interested in such intended changes shall be agreed upon within ten days after the receipt of said notice, and said time shall be within the thirty days provided in the notice. In every case where such notice of intended change has been given, or conferences are being held with reference thereto, or the services of the Mediation Board have been requested by either party, or said Board has proffered its services, rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon . . . by the Media-

conflict between the firemen[4] and the railroads loosely coincided with the birth of Rudolf Diesel more than a century ago. *Brotherhood of Locomotive Firemen & Enginemen v. Central of Georgia Ry.*, 5 Cir. 1969, 411 F.2d 320, 321. We need not here repeat the historical narrative which others have already published. *E.g., Brotherhood of R.R. Trainmen v. Akron & Barberton Belt RR.*, D.C. Cir. 1967, 385 F. 2d 581, 588-92, *cert. denied*, 1968, 390 U.S. 923. Instead, we shall confine our explication to events comprising the factual context of this particular controversy.

On November 15, 1965, the Brotherhood of Locomotive Firemen and Enginemen served upon the Atlanta and West Point Railroad and the Western Railway of Alabama three section 6 notices[5] proposing changes in the existing collective bargaining agreement. The present controversy is concerned primarily with Notice 3, which pertained to establishment of an apprentice-engineer training program for firemen.

Responding to the union's proposals, the railroads scheduled a conference. During this and subsequent meetings, they contended that the union's requests were "premature, unlawful, and non-bargainable."[6] Later,

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tion Board, unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the Mediation Board.

45 U.S.C.A. § 156.

[4] The United Transportation Union's predecessor, the Brotherhood of Locomotive Firemen & Enginemen, negotiated the current collective bargaining agreement between the firemen and these railroads in 1957. 307 F. Supp. at 1207.

[5] See note 3 *supra*.

[6] The railroads asserted that they could not negotiate with respect to these notices while Award 282 was in effect. For discussion of this congressionally inspired award and refutation of the railroad's position, *see Brotherhood of R.R. Trainmen v. Akron & Barberton Belt R.R., supra*.

however, management expressed willingness to begin preliminary discussions but, viewing all notices served on November 15 as constituting a single section 6 notice, insisted on concurrent consideration of the railroads' counterproposal of January, 1966.[7] The union rejected this invitation, since it deemed the notices mutually independent. Indeed, on February 22, 1966, T. F. Carr, general chairman of the union's local grievance committee, stated in a letter to Marshall L. Bowie, the carriers' personnel director, that conferences concerning the union's proposals had been terminated prior to that date and could not be reopened. Although Carr later modified his position with regard to the training program, the record discloses no formal attempt to reopen negotiations. Consequently the merits of Notice No. 3 have never been discussed.

The District Court found that, at one time or another, both parties refused to resume negotiations concerning the bargainability of Notice No. 3. The court plausibly concluded that the hiatus resulted because all concerned were awaiting the outcome of litigation, instituted by other unions and other carriers, to determine the bargainability of Notice No. 3. Necessarily antecedent to the resolution of this issue was an answer to the question whether any union—the Brotherhood of Locomotive Firemen and Enginemen and the Brotherhood of Locomotive Engineers were specifically concerned—possessed the exclusive right to contractually arrange an apprentice-engineer program with the carriers. Finally, in *Brotherhood of Locomotive Firemen & Enginemen v. National Mediation Board*, D.C. Cir. 1969, 410 F.2d 1025, 1032, *cert. denied*, 396 U.S. 878, the District of Columbia Circuit held "that the Firemen's Section 6 notice concerning engineer apprenticeship

[7] The railroads' counterproposal is of no moment to the ultimate resolution of this controversy.

programs . . . was bargainable under the Railway Labor Act."[8]

On November 7, 1969, little more than two weeks after the Supreme Court denied certiorari in the above case, the National Railway Labor Conference, which represents the railroads involved here and other carriers, sent the United Transportation Union a written offer to negotiate, and suggested a time and place for the meeting. The Union's international president replied on November 12 that the union was not prepared to consider the matter on a national basis. He concluded that the "suggestion for a meeting [concerning Notice No. 3 should] be sent to the General Chairmen of those General Committees which served that Notice." On November 14, the union's international vice-president arrived in Montgomery, Alabama. On November 15, he informed the general chairman of the union on the Atlanta and West Point Railroad and the Western Railway of Alabama that a strike would commence at 6:00 a.m. that morning.

The strike was short-lived. During the evening of November 15, the District Court for the Northern District of Georgia issued a temporary restraining order. That order was continued by consent of the parties until December 4. Following a hearing on that date, the temporary order remained in force pending issuance of the court's ruling. On January 5, 1970, the court decided that the union had mistakenly treated "the abortive discussions between the parties *about* negotiations as a substitute *for* negotiations and as an exhaustion of the procedural re-

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[8] During the summer of 1969, the Brotherhood of Locomotive Engineers served these railroads with a section 6 notice indicating their desire to bargain concerning an apprentice-engineer program. The railroads and the Engineers subsequently entered a bargaining agreement based upon that union's proposal. 307 F. Supp. at 1207. Implementation of the agreement was scheduled for November 1969.

quirements of the RLA so that it now may strike." 307 F. Supp. at 1210. According to the district judge, the Railway Labor Act requires good-faith negotiations as a prerequisite to the exercise of self-help by either party. Therefore, the carriers must be enjoined from refusing to negotiate and from refusing to comply with the Act's other mandatory provisions; and the union must be enjoined from striking pending such compliance, unless in the meantime the carriers should unilaterally alter existing working conditions or otherwise disturb the *status quo*. *Id.* at 1211. The court concluded:

> Accordingly, an injunction will issue against the union until the statutory procedures have been followed and until further order of the court, and both parties shall proceed forthwith to make a good-faith effort to settle in conference their differences with regard to all bargainable proposals for changes which the union served upon plaintiffs [railroads] in November 1965.

*Id.* at 1212.

Appealing this order pursuant to 28 U.S.C.A., § 1292 (a)(1), the union argues that the District Court erred both in its findings of fact and in its application of the law. The appeal rests on three grounds: First, the four year delay between the union's section 6 notices and the railroads' offer to negotiate conclusively indicates that the carriers have not made "every reasonable effort" to settle the dispute, a requirement of the Norris-LaGuardia Act, section 8. Having failed to satisfy this condition precedent, the railroads had no standing to seek injunctive relief. Second, because the carriers unilaterally changed one of the terms or conditions of the firemen's employment in violation of the Railway Labor Act, section 6, the Norris-LaGuardia Act, section 8, precluded any injunction against the strike. Finally, by negotiating with the En-

gineers rather than the Firemen with regard to the apprentice-engineer program, the railroads attempted to "interfere with, influence, or coerce" their employees in violation of the Railway Labor Act, section 2, Third. The District Court's order rewarded the railroads for engaging in such illegal activity. We find each of these conclusions untenable.

Section 4 of the Norris-LaGuardia Act, 29 U.S.C.A., § 104, specifically provides: "No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute . . .". By its terms this prohibition is absolute. Nevertheless, the Supreme Court has recognized a duty to reconcile the policies underlying the Norris-LaGuardia Act with those underlying the Railway Labor Act. *E.g., Brotherhood of R.R. Trainmen v. Chicago River & Indiana R.R.*, 1957, 353 U.S. 30, 40-42; *Virginian Ry. v. System Federation No. 40*, 1937, 300 U.S. 515; 563; *see Boys Markets, Inc. v. Retail Clerks Union, Local 770*, 1970, 398 U.S. 235, 251-52. Recently the Court noted:

> The heart of the Railway Labor Act is the duty, imposed by § 2 First upon management and labor, "to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes . . . in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof."
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> The Act provides a detailed framework to facilitate the voluntary settlement of major disputes. . . . While the dispute is working its way through these stages, neither party may unilaterally alter the *status quo*.

*Brotherhood of R.R. Trainmen v. Jacksonville Terminal Co.*, 1969, 394 U.S. 369, 377-78; *see Detroit & Toledo*

*Shore Line R.R. v. United Transportation Union*, 1969, 396 U.S. 142; *National Airlines, Inc. v. International Association of Machinists & Aerospace Workers*, 5 Cir. 1969, 416 F.2d 998, 1000-1002; *United Industrial Workers v. Board of Trustees of Galveston Wharves*, 5 Cir. 1968, 400 F.2d 320, 323-24; *cert. denied*, 1969, 395 U.S. 905; *cf. Brotherhood of R.R. Trainmen v. Chicago River & Indiana R.R., supra* (minor dispute). That a major goal of the Railway Labor Act is the prevention of workstoppages in the transportation industry should not require reiteration. *See, e.g., Texas & New Orleans R.R. v. Brotherhood of Ry. & Steamship Clerks*, 1930, 281 U.S. 548, 561; *United Industrial Workers v. Board of Trustees of Galveston Wharves, supra* at 329. "[The] procedures of the Act are purposely long and drawn out, based on the hope that reason and practical considerations will provide in time an agreement that resolves the dispute." *Brotherhood of Ry. & Steamship Clerks v. Florida East Coast Ry.*, 1966, 384 U.S. 238, 246; *accord, Brotherhood of R.R. Trainmen v. Akron & Barberton Belt R.R., supra* at 597.

By striking, the union unquestionably altered the *status quo*. To effectuate the policies of the Railway Labor Act, the District Court had jurisdiction to provide temporary injunctive relief until the disputants had exhausted the Act's procedures. *Piedmont Aviation, Inc. v. Air Line Pilots Association*, 4 Cir. 1969, 416 F.2d 633, 636, *cert. denied*, 1970, 397 U.S. 926; *see Long Island R.R. v. System Federation No. 156*, 2 Cir. 1966, 368 F.2d 50, 52-53; *Flight Engineers' International Association v. American Airlines, Inc.*, 5 Cir. 1962, 303 F.2d 5, 11; *Pennsylvania R.R. v. Transport Workers Union*, E.D. Pa. 1962, 202 F. Supp. 134, 137-38; *cf. R.R. Yardmasters v. Pennsylvania R.R.*, 3 Cir. 1955, 224 F.2d 226. Undeniably, when the union struck, the parties had exhausted none of the Act's procedures. Discussions concerning the bargainability

of Notice No. 3 were not a satisfactory substitute for negotiations concerning the merits of that notice. Consequently validity of the court's exercise of jurisdiction does not hinge upon classification of the dispute as either "major" or "minor."[9] *See, E.g., Piedmont Aviation, Inc. v. Airline Pilots Association, supra.* In either event, under the circumstances of this case, the District Court properly assumed jurisdiction.

The union, however, argues that although the court may have had jurisdiction, it had no power to provide temporary injunctive relief. Relying on *Brotherhood of R.R. Trainmen, Enterprise Lodge No. 27 v. Toledo, Peoria & Western R.R.*, 1944, 321 U.S. 50, and *United Industrial Workers v. Board of Trustees of Galveston Wharves, supra,* the union contends that the carriers lacked the "clean hands" necessary to gain an injunction. Thus section 8 of the Norris-LaGuardia Act precluded such a

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[9] The "major"-"minor" distinction evolved from *Elgin, Joliet & Eastern Ry. v. Burley*, 1945, 325 U.S. 711, 722-23. It is not articulated in the Railway Labor Act. Judge (now Mr. Justice) Marshall has stated:

> The words "major" and "minor" have no intrinsic legal significance. They are derived from the terminology of railway industrial relations and are used judicially merely as a shorthand way of referring to a distinction incorporated in the structure of the Railway Labor Act. The statute, itself, however, does not use the words. The distinction is of legal significance solely because the Act establishes mutually exclusive mandatory procedures to be followed in resolving two different kinds of disputes.

*Rutland Ry. v. Brotherhood of Locomotive Engineers*, 2 Cir. 1962, 307 F.2d 21, 42-43 (dissenting opinion), *cert. denied*, 1963, 372 U.S. 954.

The courts have provided sundry interpretations of the distinction between the two types of dispute. *See, e.g, Railway Express Agency, Inc. v. Brotherhood of Railway, Airline & Steamship Clerks*, 5 Cir. 1971, ... F.2d ... [No. 29256, Jan. 25, 1971]. *United Industrial Workers v. Board of Trustees of Galveston Wharves*, 5 Cir. 1965, 351 F.2d 183, 188-189; *St. Louis, San Francisco & Texas Ry. v. R.R. Yardmasters*, 5 Cir. 1964, 328 F.2d 749, 752-53, *cert. denied*, 377 U.S. 980; *Rutland Ry. v. Brotherhood of Locomotive Engineers, supra* at 33-34.

remedy. To substantiate its claim, the union avers that the railroads' agreement with the Brotherhood of Locomotive Engineers regarding an apprentice-engineer program[10] was a unilateral change in the terms or conditions of the firemen's employment which violated section 6 of the Railway Labor Act. Moreover, this agreement was a manifestation of the carriers' efforts to destroy the firemen's union, a violation of section 2, Third, of the Railway Labor Act. If either of these observations was factually supportable, the union arguments might have merit.

In *Enterprise Lodge No. 27, supra,* a union struck after negotiation and mediation had failed and the railroad had refused to arbitrate. The Supreme Court held that section 8 of the Norris-LaGuardia Act prohibited an injunction to terminate the strike: "Arbitration under the Railway Labor Act was available, afforded a method for settlement Congress itself had provided, and until [the railroad] accepted this method it had not made 'every reasonable effort to settle' the dispute, as § 8 requires." 321 U.S. at 65. The Court noted:

> [Section 8] imposes two conditions. If a complainant has failed (1) to comply with any obligation imposed by law or (2) to make every reasonable effort to settle the dispute, he is forbidden relief. . . .
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> . . . Section 8 is not limited to railway labor disputes. But it includes them. And its very terms show they were used in explicit contemplation of the procedures and machinery then existing under the Railway Labor Act and with the intent of making their exhaustion conditions for securing injunctive relief, not singly or alternatively, but conjunctively or successively, when available.

*Id.* at 56-58 (footnote omitted). To fortify its holding, the Court relied partly on congressional debates preced-

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[10] See note 8 *supra.*

ing passage of the Norris-LaGuardia Act. Representative LaGuardia, who sponsored the bill in the House, commented:

> [T]here is [a] tie-up between the provisions of the railroad labor act and the necessity of exhausting every remedy to adjust any difference which might arise. The workers could not and would not think of going on strike before all of the remedies provided in the law have been exhausted. If the railroads have complied, they would not . . . be deprived of any relief which they may have in law or equity.

75 Cong. Rec. 5504. Crucial to the Court's rationale is the fact that at the time the railroad sought to enjoin the strike, it was also refusing to arbitrate. Thus the union had exhausted every available avenue to agreement and was free to resort to self-help, whatever the consequences. *See Brotherhood of R.R. Trainmen v. Jacksonville Terminal Co., supra* at 377-80; *Brotherhood of Ry. & Steamship Clerks v. Florida East Coast Ry., supra* at 243-44; *Brotherhood of Locomotive Engineers v. Baltimore Ohio R.R.*, 1963, 372 U.S. 284, 289-91; *Elgin, Joliet & Eastern Ry. v. Burley*, 1945, 325 U.S. 711, 725.

In *Order of R.R. Telegraphers v. Chicago & Northwestern Ry.*, 1960, 362 U.S. 330, the Court upheld a district court's decision that section 8 of the Norris-LaGuardia Act had deprived it of the power to permanently enjoin a strike. The district court had found that the complainant railroad was engaged in a continuing refusal to bargain concerning the subject matter of a section 6 notice. Furthermore, the union had exhausted every procedure available under the Railway Labor Act.

To the extent that the union relies on *Galveston Wharves, supra,* to buttress its section 8 argument, it is mistaken. Judge Wisdom, writing for this Court, con-

cluded that the Norris-LaGuardia Act was inapplicable to the *Galveston Wharves* controversy. 400 F.2d at 331 n. 33. Moreover, with regard to the Railway Labor Act, *Galveston Wharves* does not deviate from the rationale of *Enterprise Lodge No. 27, supra*, and its progeny. It is true that even though bargaining had not begun, this Court upheld a union's right to strike pending the carrier's compliance with the Act. Nevertheless, the factual underpinning for this decision cannot be overlooked: the carrier had leased facilities and discharged employees without notice, thereby destroying the *status quo* in violation of the Act. Consequently, "under the Act, the Union had the right to strike; that right continues until the Act is complied with by the Carrier, and thereafter ceases during and until exhaustion, of the procedures set up by the Act." 400 F.2d at 333; *see Detroit & Toledo Shore Line R.R. v. United Transportation Union, supra* at 150-55. In *National Airlines, Inc. v. International Association of Machinists Aerospace Workers, supra,* this Court again noted that the union's right to strike is terminable when the carrier has complied with the Act. Applying the *Galveston Wharves* rationale to the facts in that case, Judge Thornberry wrote:

> [I]t is conceivable that the strike at the time of the first hearing was lawful. The Union, however, did not contest the initial strike injunction. In any event, the Carrier promptly complied with the January 18 temporary restraining order, issued contemporaneously with the strike injunction, and was therefore in compliance with the Act. The strike, however, continued and was, therefore, even under the *Galveston Wharves* rationale, in violation of the Act and properly enjoinable from that point forward, if not before.

416 F.2d at 1003 n. 4; *see Rutland Ry. v. Brotherhood of Locomotive Engineers,* 2 Cir. 1962, 307 F.2d 21, 39 n. 11; *cert. denied,* 1963, 372 U.S. 954.

In the case *sub judice*, we fail to discern why section 8 of the Norris-LaGuardia Act should have deprived the District Court of power to issue a temporary injunction. Application of section 8 would have contributed nothing, under these circumstances, to reconciliation between the Norris-LaGuardia Act and the Railway Labor Act. Instead, it would have served merely to emasculate the latter. Neither *National Airlines, supra,* nor *Galveston Wharves, supra,* demands, or sanctions, such disregard for the legislative goals of the Railway Labor Act. Indeed, assuming *arguendo* that the railroads alone were culpable for the four year delay between delivery of Notice No. 3 and their offer to bargain, that they were ready to negotiate at the time the union struck remains uncontroverted. Since the disputants had not exhausted the procedures established by the Railway Labor Act, *Galveston Wharves, supra,* and *National Airlines, supra,* required that the strike be enjoined. The District Court, cognizant of its duty, refused to shirk the responsibility: its *quid pro quo* injunction ensured not only that the work stoppage would end but also that the railroads would negotiate in good faith. The court's order did not foreclose future self-help, once the Act's procedures were exhausted or a violation of the Act occurred.[11]

Furthermore, we fail to perceive how the railroads' agreement with the Engineers concerning an apprentice-engineer program changed the terms or conditions of the firemen's employment, and thus justified the strike. At the time they exercised self-help, the Firemen had not even begun to negotiate concerning the merits of their proposed program, nor had the Engineers tried to include firemen in their program. Therefore, it was too early to

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[11] *See generally* Risher, "The Railway Labor Act," 12 *B.C. Ind. & Com. L.Rev.* 51 (1970); Wimberly, "The Labor Injunction—Past, Present, and Future," 22 *So. Car. L. Rev.* 689, 698-723 (1970).

speculate as to what effect the Engineers' agreement would have on the firemen's traditional expectation of promotion to the job of engineer. For the moment, Rule 37 of the Firemen's collective bargaining agreement with the carriers protected their promotional interest.[12] It follows that there could have been no provable change in the *status quo*. Until the Firemen have negotiated their own training agreement with the railroads, it is even conceivable that the brotherhoods can discard sibling rivalries and implement an apprentice-engineer program satisfactory to all concerned. Such accommodation may not be possible, but it is conceivable.

Finally, it would be ludicrous to hold that the railroads' undertaking of a statutory duty to bargain with the Engineers constituted an attempt to "interfere with, influence, or coerce" firemen, a violation of the Railway Labor Act Section 2, Third. The record shows that the carriers negotiated with the Engineers in response to a Section 6 notice. To say that the performance of this legal obligation was illegal is a *non sequitur* to which we cannot subscribe. That the railroads may have been derelict in their duty to bargain with the Firemen concerning a similar section 6 notice is irrelevant to our resolution of this issue.

Concurring in *Brotherhood of Locomotive Firemen & Enginemen v. National Mediation Board, supra,* Judge (now Chief Justice) Burger stated:

> Today's result places the carriers in the unhappy position of having to deal simultaneously with two rival unions whose bargaining demands will very likely conflict if a high order of union statesmanship is not forthcoming. Moreover, since both Unions have

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[12] Rule 37 provides that firemen shall be afforded an opportunity for promotion to engineers after they have passed required examinations and met prescribed standards.

> now been given the right to serve Section 6 notices, the disappointed Union will have the right to strike once the statutory procedures are exhausted. The Carriers will be able neither to avoid nor to resolve a strike by agreeing with the striking union without the risk of violating its obligation not to depart unilaterally from its agreement with the other Union. Although I consider this to be a wholly unsatisfactory resolution I can find nothing in the statute which permits the Court to impose a different result.

410 F.2d at 1035; *cf. Transportation-Communication Employees Union v. Union Pacific R.R.*, 1966, 385 U.S. 157; *Slocum v. Delaware, Lackawanna & Western R.R.*, 1950, 339 U.S. 239; *Order of Ry. Conductors v. Pitney*, 1946, 326 U.S. 561, 567. *The Railway Labor Act and National Mediation Board, supra*, have impaled the carriers on the horns of a bargaining dilemma.[13] Now the union asks us to inform these railroads that one horn is legally more comfortable than the other. This we refuse to do. While *National Mediation Board, supra*, vindicated the union's right to bargain with regard to Notice No. 3, it did not give the Firemen an exclusive right to negotiate an ap-

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[13] Concerning the equities of the *National Mediation Board* decision Chief Judge Brown has remarked:

> This sequel concerns the internecine, intramural, probably non-fraternal dispute between the two Brotherhoods as to which gets the Apprentice Engineer craft and the dilemma facing the Carriers in recognition and bargaining. With the collective apologia of the Court's principal spokesman, Judge J. Skelly Wright, and special sentiments of Judges Burger and Tamm, the Court may itself be giving its decision the characterization that it is bound to be right because it is so wrong in result.

*Brotherhood of Locomotive Firemen & Enginemen v. Central of Georgia Ry.*, 5 Cir. 1969, 411 F.2d 320, 322, n. 1. Others have argued that the Railway Labor Act itself needs repair and have recommended alternative legislation. *See* Risher, *supra* note 11; Silberman, "National Emergency Disputes—The Considerations Behind a Legislative Proposal," 4 *Ga. L.Rev.* 673 (1970).

prentice-engineer program, nor did it authorize self-help prior to exhaustion of the Act's procedures.

Accordingly, we conclude that the District Court did not abuse its discretion when it preliminarily enjoined the strike in question. *See Piedmont Aviation, Inc. v. Air Lines Pilots Association, supra; Flight Engineers' International Association v. American Airlines, Inc., supra* at 11; *cf. Seaboard World Airlines, Inc. v. Transport Workers Union,* 2 Cir. 1970, 425 F.2d 1086, 1091-92. On November 15, 1969, neither party had the right to resort to self-help to resolve this dispute. *See Flight Engineers' International Association v. American Airlines, supra; cf. Northern Pacific Ry. v. Brotherhood of Locomotive Engineers,* D. Minn. 1970, 308 F. Supp. 995, 997-98. The District Court's order is

AFFIRMED.

## APPENDIX B

### Atlanta & West Point R. Co. v. United Transportation Union

Cite as 307 F.Supp. 1205 (1970)

Atlanta and West Point Railroad Company and Western Railway of Alabama

v.

United Transportation Union, an Unincorporated Labor Union, and C. M. Cagle, 1999 Meador Avenue, S.E., Atlanta, Georgia, Individually, and as Representative of Such Class.

Civ. A. No. 13269.

United States District Court
N. D. Georgia,
Atlanta Division.

Jan. 5, 1970.*

Action by railroads to enjoin railway labor union and its members from engaging in allegedly unlawful picketing and work stoppage. The District Court, Edenfield, J., held that railroads' action, after union representing firemen had served notice relating to establishment of an apprentice-engineering training program, in negotiating training program with union representing engineers did not constitute a change in status quo under firemen's collective bargaining agreement providing that firemen shall be afforded an opportunity for promotion to engineers and did not, of itself, justify firemen's use of self-help.

Injunction issued.

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* On September 12, 1969, in Memorandum Decision, No. 13,603, the Fourth Circuit affirmed the Order of this Court denying habeas corpus relief to Taylor.

**1. Labor Relations Key 289, 295**

Railroads' action, after union representing firemen had served notice relating to establishment of an apprentice-engineering program, in negotiating training program with union representing engineers did not constitute a change in status quo under firemen's collective bargaining agreement providing that firemen shall be afforded an opportunity for promotion to engineers and did not, of itself, justify firemen's use of self-help in the form of picketing and work stoppage. Railway Labor Act §§ 1 et seq., 2, subd. 7, 6, 45 U.S.C.A. §§ 151 et seq., 152, subd. 7, 156.

**2. Labor Relations Key 263**

Provision of Railway Labor Act that no carrier shall change pay, rules or work conditions as embodied in agreements except as provided by statute applies only to changes in existing agreements and does not prevent changes in existing working conditions not embodied in agreements. Railway Labor Act, § 2, subd. 7, 45 U.S.C.A. § 152, subd. 7.

**3. Labor Relations Key 263**

Status quo duties under Railway Labor Act prevent changes in existing working conditions whether they are covered by existing agreement or not, once the major dispute machinery of the Act has been set into motion. Railway Labor Act, §§ 5, 6, 10, 45 U.S.C.A. §§ 155, 156, 160.

**4. Labor Relations Key 263**

Neither provision of Railway Labor Act barring changes in pay, rules or work conditions embodied in agreements except as provided in Act nor any of the status quo sections are applicable unless change complained of is a change in a condition which exists at time dispute arises. Railway Labor Act, §§ 2, subd. 1, 5, 6, 10, 45 U.S.C.A. §§ 152, subd 7, 155, 156, 160.

**5. Labor Relations Key 940**

Evidence established that both railroads, seeking to enjoin labor union from picketing and work stoppage, and union refused to bargain on issue of establishment of apprentice training program prior to union's taking self-help. Railway Labor Act, § 1 et seq., 45 U.S.C.A. § 151 et seq.

**6. Labor Relations Key 281**

Where a major dispute is involved between a railroad and a labor union representing its employees, genuine, good-faith negotiations are required prior to resort to self-help and neither refusal to negotiate, nor an agreement not to negotiate nor dispute about negotiations will suffice. Railway Labor Act, § 1 et seq., 45 U.S.C.A. § 151 et seq.

**7. Labor Relations Key 811, 816**

Where there had been no negotiations between railroad and labor union relating to establishment of an apprentice training program prior to union's seeking self-help, carriers were enjoined from refusing to negotiate and from refusing to comply with other mandatory provisions of Railway Labor Act and union was enjoined from striking pending such compliance, unless carriers unilaterally altered existing working conditions or otherwise disturbed status quo. Railway Labor Act, § 1 et seq., 45 U.S.C.A. § 151 et seq.

**8. Labor Relations Key 858**

Norris-LaGuardia Act is no bar to mandatory injunction to compel recalcitrant parties to comply with mandatory provisions of Railway Labor Act. Railway Labor Act, § 1 et seq., 45 U.S.C.A. § 151 et seq.

**9. Labor Relations Key 804**

If neither party to a major railway labor dispute has bargained in good faith, both are subject to a mandatory injunction compelling negotiation, and self-help by either is unlawful and enjoinable in the meantime. Railway Labor Act, § 1 et seq., 45 U.S.C.A. § 151 et seq.

**10. Labor Relations Key 263**

Where union representing firemen had filed notice relating to establishment of an apprentice-engineer training program prior to time railroads negotiated apprentice-engineer training program with union representing engineers, carriers were under continuing duty, pending bargaining under notice, from unilaterally changing conditions under which firemen had been promoted to engineers and carrier could not require that firemen participate in training program carriers had negotiated with engineers' union. Railway Labor Act, § 1 et seq., 45 U.S.C.A. § 151 et seq.

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Lamar W. Sizemore, and William H. Major, Heyman & Sizemore, Atlanta, Ga., for plaintiffs.

Hugh Gibert and Richard N. Hubert, Haas, Holland, Freeman, Levison & Gibert, Atlanta, Ga., for defendants.

Order

Edenfield, District Judge.

This action for injunctive relief was instituted on November 15, 1969, by Plaintiffs Atlanta and West Point Railroad Company and Western Railway of Alabama (hereinafter referred to collectively as A & W P) to enjoin the allegedly unlawful picketing and work stoppage which defendants on that day had instituted on the prop-

erties of plaintiffs and along the lines where plaintiffs' trains are operated. A temporary restraining order issued on November 15th was continued until December 4th by consent of the parties and following a hearing on that date was continued pending issuance of this court's ruling. Defendants' answer and counterclaim for injunctive relief against the carriers were filed on December 16, 1969.

Plaintiffs are carriers engaged in interstate commerce within the meaning of the Railway Labor Act (45 U.S.C. § 151 et seq.). Defendant United Transportation Union (UTU) is an unincorporated labor organization and is the recognized bargaining agent for firemen and certain other railway employees of both plaintiffs. Defendant Cagle is named as a defendant both individually and as a representative of those of plaintiffs' employees who are represented by the UTU.

The dispute between the parties centers around an apprentice-engineer program which the union proposed to the carriers in November 1965, pursuant to § 6 of the Railway Labor Act (45 U.S.C. § 156), and raises questions as to whether (1) the carriers' negotiation of a contract regarding an apprentice-engineer program with another union, after Defendant UTU's § 6 notice was filed, constituted a change in the status quo and therefore justified the use of self-help by defendants, and, if not, as to whether (2) either party's mere refusal to bargaining good faith, standing alone, would justify the use of self-help by the other party.

The record shows that there is an existing collective bargaining agreement which was entered into between plaintiffs and Defendant UTU's predecessor—the Brotherhood of Locomotive Firemen and Engineers (BLFE)—in 1957, and which provides for rates of pay, rules, regulations, and working conditions under which plaintiffs' fire-

men, hostlers, and hostler helpers are employed. Rule 37 of that agreement provides that firemen *shall be afforded an opportunity for promotion to engineers* after they have passed certain required examinations and have met certain prescribed conditions. The agreement was last amended in 1959, but in November 1965 the UTU served notice on plaintiffs of its desire to effect certain changes in the existing contract. The proposed changes were presented in the form of three § 6 notices, all of which were served on the same day, but the present controversy is concerned almost entirely with what is generally referred to as Notice No. 3, relating to the establishment of an apprentice-engineer training program.[1]

[1] The record shows further than during the summer of 1969 the union which represents plaintiffs' engineers, *i. e.*, the Brotherhood of Locomotive Engineers (BLE), also served the carriers with a § 6 notice indicating a desire to bargain with regard to an apprentice-engineer training program and that plaintiffs and the BLE subsequently entered into a bargaining agreement based upon that union's proposal. Defendants now contend that by negotiating with the engineers plaintiffs have altered the status quo with respect to the firemen and thereby have violated § 2, Seventh, of the Railway Labor Act (45 U.S.C. § 152, Seventh), which provides that "No carrier * * * shall change the rates of pay, rules, or working conditions of its employees, as a class, as embodied in agreements except in the manner prescribed in such agreements or in section 156 of this title [i. e., § 6 of the Act]." For the

[1] At about the same time, similar notices were served on carriers throughout the country by other local units of the UTU. In subsequent litigation Notices 1 and 3 were judicially determined to present bargainable, and Notice 2 nonbargainable issues. Brotherhood of Railroad Trainmen v. Akron & B.B.R.R., 128 U.S.App. D.C. 59, 385 F.2d 581 (1967); Brotherhood of Locomotive Firemen & Engineers v. National Mediation Board, 133 U.S.App.D.C. 326, 410 F.2d 1025 (1969).

reasons set forth below, the court rejects that contention and finds that the carriers' actions in negotiating this contract do not constitute a violation of the Railway Labor Act.

There is at present no dispute regarding the bargainability of the subject matter contained in defendants' Notice No. 3, but plaintiffs correctly contend that the subject of an apprentice-engineer program is bargainable with both the BLE and the UTU[2] and that their contract with the BLE in no way affects either their ability or their desire to bargain with the UTU on the same subject matter. Having bargained with the engineers, plaintiffs are still free (and indeed have a duty) to bargain with the firemen. Although the apprenticeship agreement which plaintiffs have with the engineers makes certain provisions which could be applicable to firemen if they entered the program under that contract, it is conceivable that after bargaining between the carriers and firemen has taken place an entirely separate apprenticeship agreement will be set up to cover firemen who wish to become apprentices.[3]

[2-4] Furthermore, to the extent that defendants allege that plaintiffs have changed *future* working conditions they have not brought themselves within either § 2, Seventh, of the Act or within any of the sections which set forth the status quo duties imposed by the Act when a

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[2] The Court of Appeals for the District of Columbia made this clear in a recent, related case when it noted that since both the firemen and the engineers have an interest in the training of apprentice engineers, until a carrier has bargained with both groups the National Mediation Board would have no basis upon which to make a craft or class determination with respect to the apprentices. Brotherhood of Locomotive Firemen & Engineers v. National Mediation Board, 133 U.S.App.D.C. 326, 410 F.2d 1025, 1034 (1969).

[3] The actual program might, of course, include employees covered by both agreements.

major dispute is involved. Section 2, Seventh, is not among the latter provisions; it merely states one category of cases in which the major dispute provisions must be invoked. Detroit & Toledo Shore Line Co. v. United Transportation Union, 396 U.S. 142, 90 S.Ct. 294, 24 L.Ed. 2d 325 (Dec. 9, 1969),[4] and it applies only to changes in *existing agreements*. The status quo duties, on the other hand, prevent changes in *existing working conditions*, whether they are covered by the existing agreement or not, once the major dispute machinery of the Railway Labor Act has been set into motion.[5] Neither § 2 Seventh, nor any of the status quo sections (§§ 5, 6, or 10), is applicable unless the change complained of is a change in conditions which existed at the time the dispute arose, *i. e.*, at the time the § 6 notice was served.

To the extent that they allege that plaintiffs' contract with the engineers changes the firemen's *present* work rules the defendants are in error. Even if the terms of the two contracts clearly conflicted, plaintiffs could not change the firemen's working conditions merely by entering into a contract (with another union) which purported to do so; the change of conditions would occur only if and when the carriers undertook to implement such

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[4] "The purpose of § 2, Seventh, is two-fold: it operates to give legal and binding effect to collective agreements, and it lays down the requirement that collective agreements can be changed only by the statutory procedures. The violation of this section is a criminal offense punishable by imprisonment or fine or both. Violations of the status quo provisions of §§ 5, 6, and 10 are only civil wrongs." Detroit & Toledo Shore Line Co. v. United Transportation Union, 396 U.S. 142, 156, 90 S.Ct. 294, 302 (Dec. 9, 1969).

[5] "The obligation of both parties during a period in which any of these status quo provisions is properly invoked is to preserve and maintain unchanged those actual, objective working conditions and practices, broadly conceived, which were in effect prior to the time the pending dispute arose and which are involved in or related to that dispute." *Id.* 396 U.S. at 152-153, 90 S.Ct. at 300-301.

changes with regard to the firemen. The firemen's interest in becoming engineers is protected by their existing bargaining agreement, Rule 37 of which provides that firemen shall be afforded an opportunity to be promoted to engineers. Despite the apprenticeship agreement which the carriers have negotiated with the engineers, the firemen are free to negotiate their own apprenticeship agreement with the carriers and need never enter the training program under the BLE—carrier agreement if they choose not to do so. There is no evidence whatever that the carriers have made any change in existing working conditions, and it necessarily follows that they have not violated the status quo.

With respect to the second question presented, *i. e.*, the refusal to bargain, all parties agree that bargaining has not yet taken place with regard to the contract changes which were proposed in defendants' November 1965 Section 6 notices, and they also agree that this results from a refusal to bargain.[6] The union, of course, contends that the carriers refused, while the carriers contend that the union refused.

[5] Under the evidence presented the court concludes that at one time or another both refused. Thus although several conferences were held with regard to defendants' Notice No. 3, it is undisputed that at those meetings the merits of the union's proposal were never discussed; instead, the meetings were devoted to discussions as to whether the issue was a bargainable one and, if so, whether the bargaining conferences should simultaneously

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[6] No question of good-faith bargaining is involved. It would be inappropriate to consider, before bargaining has even begun, what effect, if any, the carriers' contract with the engineers might have on the question of good-faith bargaining. Furthermore, the services of the National Mediation Board cannot be invoked until bargaining has taken place and an impasse has been reached (45 U.S.C. § 155.) unless the Mediation Board dockets the case for mediation on the national level as it has been requested to do.

consider all of the union's proposals, and a counterproposal which the carriers had made, or whether the discussion should be confined to the changes proposed in the union's Notice No. 3. With respect to the positions taken by the respective parties during these conferences it also appears, and indeed is undisputed, that although the carriers initially took the position that the union's combination proposal of November 15, 1965, was "premature, unlawful, and non-bargainable," they later expressed willingness to begin preliminary discussions on the union's November 15th proposals.[7] The carriers viewed all notices served by the union on November 15th as constituting a single § 6 notice and insisted upon their right to discuss concurrently both that notice and their own counterproposal of January 1966. The union, on the other hand, viewed each notice as entirely independent of the others and refused to discuss them concurrently. This conflict was never resolved and the evidence shows that at least as early as February 22, 1966, Mr. T. F. Carr, General Chairman of the union's local Grievance Committee, stated in a letter to Mr. Bowie, the carriers' Director of Personnel, that conferences on the union's proposals had been terminated some time prior to that date and could not be reopened.

The union now contends, however, that the carriers have been in violation of the Railway Labor Act since November 1965 in that they have consistently refused to bargain with regard to their § 6 Notices No. 1 and No. 3. Notice No. 2, of course, has been held nonbargainable and is not at issue here.

In the first place, and to the extent that it makes any difference, the court cannot completely agree that, under

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[7] Letter dated January 31, 1966, from Marshall L. Bowie, Director of Personnel and Assistant to General Manager of both railroads, to T. F. Carr, General Chairman of UTU's predecessor (BLFE).

the evidence, it was the carriers which have consistently refused to bargain with respect to the defendant union's § 6 notice. It is true that when the § 6 notice was first served in 1965[8] these carriers along with other carriers, took the position that the issue was a nonbargainable one. In fact, certain of the other carriers along with other unions caused litigation to be instituted to resolve this question and a judgment was ultimately entered finding in favor of bargainability.[9] While this litigation was pending it appears that all parties held off awaiting the outcome, but even before the litigation was over it also appears that the plaintiff carriers here wrote the defendant union expressing willingness to begin negotiations if all notices (both proposals and counterproposals) could be considered together (see letter of 1/31/66 referred to in fn. 7, supra). Thereafter on February 22, 1966, the union replied, rejected this offer and saying that conferences on the union's proposals had been terminated some time prior to that date and could not be reopened. As respects formal (written) offers to negotiate there the matter rested on both sides until the strike was called on November 15, 1969, some three years and nine months later.[10]

[6] In view of the court, however it makes no difference who first refused to negotiate in any event. Apparently the defendant union would now treat the abortive discussions between the parties *about* negotiations as a

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[8] The court makes no finding as to the viability of a § 6 notice served in 1965 as respects a strike based thereon nearly four years later in 1969. In view of the other findings in this opinion, the court treats the notice as still being valid.

[9] *See* Brotherhood of Locomotive Firemen & Engineers v. National Mediation Board, 133 U.S.App.D.C. 326, 410 F.2d 1025, *supra*.

[10] It is true, however, that at the hearing the head of the union did testify that thereafter at one or more chance meetings he did orally mention further negotiations which were refused.

substitute *for* negotiations and as an exhaustion of the procedural requirements of the RLA so that it now may strike. This view, however, misconceives the entire scheme of the Railway Labor Act. What the Act positively requires, where a major dispute is involved, is genuine, good-faith negotiations, and neither a refusal to negotiate, nor an agreement not to negotiate nor a dispute about negotiations will suffice. If either party refuses to negotiate it may be compelled to do so by mandatory injunction. This is necessarily true, else the whole elaborate "cooling-off" procedures set up by the Act could be set at naught at the whim of either party, disrupting interstate commerce and fomenting the very evils which the Act was designed to prevent.

As the Fifth Circuit held in its most recent opinion, in which it concluded that unlawful self-help by one party does not automatically justify retaliatory self-help by the other party:

> "The cooling-off policies of the major dispute procedures cannot be effectuated by allowing both parties simply to do away with the Act."[11]

This appears to be the holding of all the cases. Thus as one court has said:

> "* * * [T]he Railway Labor Act imposes a mandatory duty upon both carrier and union to follow its procedures in the case of major disputes. *While agreement is not compulsory the steps required by the Act are.* In the event that either party refuses to follow them it has failed to follow the plain mandate of Congress and has breached the duty which Congress imposed upon it. Injunctive relief is required to 'vindicate' [the Act] * * *." (Emphasis

[11] National Airlines, Inc. v. International Ass'n of Machinists and Aerospace Workers, 416 F.2d 998 (1969).

added.) American Airlines, Inc. v. Air Line Pilots Ass'n. D.C., 169 F.Supp. 777, 787 (cited by 5th Cir. in United Industrial Workers, etc., v. Board of Trustees, etc., 400 F. 2d 320).

This also accords with the statement of Judge (now Mr. Justice) Marshall that:

> "'The legislative history (of the Railway Labor Act) indicates that when the rail unions and carriers agreed upon these provisions, the unions surrendered their rights to strike pending exhaustion of major dispute procedures in exchange for a statutory provision restraining management from disturbing the status quo.'" Rutland Ry. Corp. v. Brotherhood of Locomotive Engineers (2nd Cir. 1962), 307 F.2d 21, 43, quoted by Fifth Circuit in United Industrial Workers, etc. v. Board of Trustees, etc., 400 F.2d 320 at 323.

[7] It follows that, there having admittedly been no negotiations, they must be begun; and in the meantime the Act must be "vindicated". That is to say, the carriers must be enjoined from refusing to negotiate and from refusing to comply with the other mandatory provisions of the Act and the union must be enjoined from striking pending such compliance, unless in the meantime the carriers should unilaterally alter existing working conditions or otherwise disturb the status quo.

[8, 9] Nothing in the Norris-LaGuardia Act bars such relief. That Act does not bar the issuance of mandatory injunctions to compel recalcitrant parties to comply with the mandatory provisions of the Act.[12] Nor does it bar

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[12] *See, e. g.*, Brotherhood of Railroad Trainmen v. Howard, 343 U.S. 768, 72 S.Ct. 1022, 96 L.Ed. 1283 (1952); Brotherhood of Railroad Trainmen v. Chicago River & Indiana R.R., 353 U.S. 30, 77 S.Ct. 635, 1 L.Ed.2d 622 (1957).

injunction against unlawful self-help by either party pending compliance therewith.[13] Under the Act, parties to a major dispute have a right to use self-help once the Act's mandatory procedures have been exhausted.[14] But self-help is lawful only if the party using it has complied with those provisions; if it has not done so the self-help is unlawful and may be enjoined despite the Norris-LaGuardia Act.[15]

Nor do the cases in which an injunction was denied militate against this conclusion. Thus in both America Airlines, Inc. v. Air Line Pilots Ass'n, supra, and in Brotherhood of Railroad Trainmen v. Toledo, Peoria & Western R. R., 321 U.S. 50, 64, S.Ct. 413, 88 L.Ed. 534 (cited by defendants), the strike came *after* protracted negotiations, not *before*, and an injunction against the strike was consequently denied. Finally, in United Industrial Workers of Seafarers, etc. v. Board of Trustees, etc., supra, an injunction was denied because there the carrier had changed existing working conditions and disturbed the status quo by selling its facilities and discharging certain employees. Under these circumstances, of course, the strike was legal and could not be enjoined. In short, the conclusion is inescapable that these cases in no way alter the rule that if neither party to a major dispute has bargained in good faith, both are subject to a mandatory injunction compelling negotiation and that

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[13] United Industrial Workers of Seafarers Intl. v. Board of Trustees of Galveston Wharves, 400 F.2d 320 (5th Cir. 1968), cert. denied, 395 U.S. 905, 89 S.Ct. 1747, 23 L.Ed.2d 219 (1969); American Airlines, Inc. v. Air Lines Pilots Ass'n Intl., 169 F.Supp. 777 (S.D.N.Y.1958).

[14] Brotherhood of Railroad Trainmen v. Jacksonville Terminal Co., 394 U.S. 369, 89 S.Ct. 1109, 22 L.Ed.2d 344 (1969).

[15] *Id.*; American Airlines, Inc. v. Air Lines Pilots Ass'n Intl., 160 F.Supp. 777 (S.D.N.Y.1958).

self-help by either would be unlawful and enjoinable in the meantime.

Applying the foregoing facts of the instant case, in which the parties agree that no bargaining has in fact taken place but with each party asserting that it was the other party who refused to bargain, one fact at least is crystal clear, *i. e.*, the bargaining which the Railway Labor Act requires has never materialized and as a result disruption of commerce is threatened. Assuming for the moment that it was the plaintiffs who refused to bargain, absent a unilateral change in the status quo by the plaintiffs, the defendants would not be entitled to use coercive self-help, although they clearly are entitled to a mandatory injunction compelling the carriers to confer. The court has rejected defendants' contention that the carriers changed the status quo by bargaining with the engineers' union regarding a matter which has been held bargainable as to both the engineers and the fireman,[16] and there is no allegation that the carriers have changed the status quo in any other manner.

[10] Holding as we do that the carriers' mere refusal to bargain, standing alone, would not provide a lawful basis for a strike, it follows that we need not decide which party is the culprit, or indeed whether both parties have failed to fulfill their statutory obligation to confer. The court notes, however, that under their existing bargaining agreement with the firemen the carriers are under a continuing duty to promote all qualified firemen to engineers and the conditions under which the firemen have been promoted must not be changed unilaterally, whether provided for in the existing agreement or not.

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16 Brotherhood of Locomotive Firemen & Engineers v. National Mediation Board, 133 U.S.App.D.C. 326, 410 F.2d 1027, 1033, 1034 (1969).

Detroit & Toledo Shore Line Co. v. United Transportation Union, supra. It follows, therefore, that the firemen may not be required to participate in the training program which the BLE and carriers have negotiated. On the other hand, the union—having filed notice in November 1965 of several areas in which it wishes to bargain—cannot now insist that each area must be negotiated without reference to the other, unless of course notice has been withdrawn as to the areas about which it does not now wish to bargain.

Accordingly, an injunction will issue against the union until the statutory procedures have been followed and until further order of the court, and both parties shall proceed forthwith to make a good-faith effort to settle in conference their differences with regard to all bargainable proposals for changes which the union served upon plaintiffs in November 1965.

It is so ordered.

# APPENDIX C

## Railway Labor Act

### § 152. General duties—Duty of carriers and employees to settle disputes

First. It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

### Consideration of disputes by representatives

Second. All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute.

### Designation of representatives

Third. Representatives, for the purposes of this chapter, shall be designated by the respective parties without interference, influence, or coercion by either party over the designation of representatives by the other; and neither party shall in any way interfere with, influence, or coerce the other in its choice of representatives. Representatives of employees for the purposes of this chapter need not be persons in the employ of the carrier, and no carrier shall, by interference, influence, or coercion seek in any manner

to prevent the designation by its employees as their representatives of those who or which are not employees of the carrier.

**Organization and collective bargaining; freedom from interference by carrier; assistance in organizing or maintaining organization by carrier forbidden; deduction of dues from wages forbidden**

Fourth. Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this chapter. No carrier, its officers, or agents shall deny or in any way question the right of its employees to join, organize, or assist in organizing the labor organization of their choice, and it shall be unlawful for any carrier to interfere in any way with the organization of its employees, or to use the funds of the carrier in maintaining or assisting or contributing to any labor organization, labor representative, or other agency of collective bargaining, or in performing any work therefore, or to influence or coerce employees in an effort to induce them to join or remain or not to join or remain members of any labor organization, or to deduct from the wages of employees any dues, fees, assessments, or other contributions payable to labor organizations, or to collect or to assist in the collection of any such dues, fees, assessments, or other contributions: *Provided*, That nothing in this chapter shall be construed to prohibit a carrier from permitting an employee, individually, or local representatives of employees from conferring with management during working hours without loss of time, or to prohibit a carrier from furnishing free transportation to its employees while engaged in the business of a labor organization.

**Change in pay, rules, or working conditions contrary to agreement or to section 15C forbidden**

Seventh. No carrier, its officers, or agents shall change the rates of pay, rules, or working conditions of its employees, as a class, as embodied in agreements except in the manner prescribed in such agreements or in section 156 of this title.

**§ 156. Procedure in changing rates of pay, rules, and working conditions**

Carriers and representatives of the employees shall give at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions, and the time and place for the beginning of conference between the representatives of the parties interested in such intended changes shall be agreed upon within ten days after the receipt of said notice, and said time shall be within the thirty days provided in the notice. In every case where such notice of intended change has been given, or conferences are being held with reference thereto, or the services of the Mediation Board have been requested by either party, or said Board has proffered its services, rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon, as required by section 155 of this title, by the Mediation Board, unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the Mediation Board.

**Norris-La Guardia Act**

**§ 104. Enumeration of specific acts not subject to restraining orders or injunctions**

No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent in-

junction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in section 103 of this title;

(c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance, or other moneys or things of value;

(d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any State;

(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

(f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;

(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 103 of this title.

**§ 108. Noncompliance with obligations involved in labor disputes or failure to settle by negotiation or arbitration as preventing injunctive relief**

No restraining order or injunctive relief shall be granted to any complainant who has failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or who has failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration.